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No. 76-99

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**In the Supreme Court of the United States**

OCTOBER TERM, 1976

OCCIDENTAL LIFE INSURANCE COMPANY  
OF CALIFORNIA, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

MEMORANDUM FOR THE EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION IN OPPOSITION

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The Equal Employment Opportunity Commission brought this action against petitioner in February 1974 in the United States District Court for the Central District of California, alleging that petitioner had engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964 by discriminating on the basis of sex. The Commission sought an injunction and an award of back pay for the persons adversely affected by the allegedly unlawful practices.

The Commission's suit was based on a charge lodged with the Commission by Tamar Edelson in December 1970. The charge was initially referred to the appropriate state agency and was formally filed with the Commission in March 1971.



The district court dismissed the Commission's complaint on the ground, *inter alia*, that it was untimely. The court ruled that an action by the Commission must be filed within 180 days from the filing of the charge upon which it is based. Alternatively, the court held that the Commission's suit was barred by the one-year limitation period established by California law.

The court of appeals reversed and remanded (Pet. App.). It held (1) that the Commission's authority to file suit is not limited to 180 days from the filing of a charge, and (2) that the Commission is not subject to state statutes of limitation when it seeks injunctive relief or back pay.

Petitioner's principal contention is that the Commission's suit is barred, insofar as it seeks back pay, by the one-year state statute of limitations.<sup>1</sup> It has long been settled, however, that, in the absence of clear congressional intent to the contrary, state statutes of limitations do not run against the United States or its agencies. *United States v. Thompson*, 98 U.S. 486; *United States v. Nashville, Chattanooga & St. Louis*

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<sup>1</sup>The petition presents two additional questions: (1) whether the Commission's suit is precluded under Title VII because it was not brought within 180 days of the filing of the charge, and (2) whether the request for injunctive relief is barred by the state statute of limitations. Petitioner acknowledges, however, that neither issue independently warrants review by this Court; it asserts only that, "if this Court grants the writ of certiorari concerning the applicability of state statutes of limitations to back pay claims asserted by the EEOC on behalf of private individuals, \* \* \* it would be advisable" to review the additional issues as well to permit "full consideration of all of the available options" (Pet. 9). For the reasons stated in the opinion of the court of appeals, petitioner's contentions with respect to these other issues are without merit (Pet. App. 4-6). Every court of appeals that has considered these issues has rejected petitioner's arguments (see Pet. App. 4 n. 5, 6).

*Railway Co.*, 118 U.S. 120; *Davis v. Corona Coal Co.*, 265 U.S. 219; *Board of Commissioners v. United States*, 308 U.S. 343; *United States v. Summerlin*, 310 U.S. 414. The decisions on which petitioner relies (Pet. 13) are cases in which the Court found that the government was only a nominal plaintiff with no real stake in the outcome of the litigation.

The present suit by EEOC is not in that category. Although the complaint seeks an award of back pay for the injured victims of petitioner's unlawful employment practices, that relief has an overriding public importance in which the Commission has a substantial interest. As this Court stated in *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417, "[b]ackpay has an obvious connection with" the central objective of Title VII to eradicate employment discrimination throughout the economy.

If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a backpay award that "provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history." [422 U.S. at 417-418.]

Petitioner relies on *United States v. Georgia Power Co.*, 474 F. 2d 906 (C.A. 5), and *Equal Employment Opportunity Commission v. Griffin Wheel Co.*, 511 F. 2d 456 (C.A. 5), on rehearing, 521 F. 2d 223, for the proposition that a state statute of limitations is "applicable to the back pay aspect of an employment discrimination suit" brought by the government under Title VII (Pet. 5). The

Fifth Circuit's decisions rest on the premise that insofar as a Title VII complaint filed by the government "seeks recovery of back pay it is private and not public in nature" (511 F. 2d at 459). That premise was subsequently undercut by this Court's decision in *Albermarle*, which identified and emphasized the public importance of back pay relief under Title VII. The Fifth Circuit may be expected to reconsider its holding in *Georgia Power* and *Griffin Wheel* in light of *Albermarle*, and there is consequently no need for this Court to resolve the issue at this time.

Moreover, the court in *Griffin Wheel* left open the question whether the state statute of limitations is tolled during the pendency of administrative proceedings before the EEOC (521 F. 2d at 224-225). The practical effect of the Fifth Circuit's holding will therefore not be evident until that issue has been resolved.

Finally, this would not be an appropriate case in which to resolve the alleged conflict in any event. The Fifth Circuit's opinion in *Griffin Wheel* stated that, in determining the date on which the cause of action accrued for purposes of the applicable statute of limitations, the court must determine "the date of the last act of discrimination" (511 F. 2d at 459). Since the Commission's complaint in this case alleged continuing violations of Title VII by petitioner, it was timely filed with respect to the back pay request even under the *Griffin Wheel* standard.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,  
*Solicitor General.*

ABNER W. SIBAL,  
*General Counsel,*  
*Equal Employment Opportunity Commission.*

NOVEMBER 1976.